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**v>**

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To jfognani@fognanilaw.com

cc Peggy Livingston/ENF/R8/USEPA/US@EPA, "Elmer,  
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bcc

Subject Richardson Flat past costs cd

John:

You inquired whether we would expand scope of covenant not to sue in Noranda past costs cd to include CERCLA section 106 for past response actions. Unfortunately, we are not able to agree to this change. There are, however, a few changes that we have agreed to make to the UPCM and Arco past cost decrees, which we are also willing to make available to you:

- (1) In paragraph 2, we agreed to say "This Consent Decree is binding upon and inures to the benefit of the United States and . . . ."
- (2) In paragraph 13, we agreed to say " . . . against Settling Defendants or their respective officers, directors, or employees (to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees. . . ."
- (3) We agreed to a new paragraph following the Covenant Not To Sue By Settling Defendant, which says "The Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Settling Defendants' Covenant Not To Sue by Settling Defendants in Paragraph \_\_\_\_."
- (4) In paragraph 20, we agreed to say "The "matters addressed" in this Consent Decree means Past Response Costs as defined herein and the response actions at the Site for which the Past Response Costs were incurred. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA for the matters addressed in this Consent Decree."

In addition, we added the following sentence in the background section which I would like to include in the Noranda decree:

"By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendant for Past Response Costs, subject to the reservation of rights in Paragraph 14, by allowing Settling Defendant to make a cash payment as described herein."

And changed the title to "Partial Consent Decree" and made changes to the first paragraph to clarify that Complaint only seeks relief pursuant to Section 107 for past costs (as opposed to 106 and/or future costs). This avoids the problem of having a consent decree that settles

something less than the entire case.

Please let me know at your earliest convenience how you would like to proceed. If these changes are acceptable to you, please send a proposal on how you would like to define "Settling Defendant" (to include related Noranda entities), and I will prepare a final version of the decree for signature.

Regards,

Mark